OIPE IAP88 NOV 22 2005 PATENT & TRADEMARK OFFICE

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Date of Deposit: October 12, 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Leviten, Michael W.	Examiner:	Wilson, Michael C.
Serial No.:	09/887,552	Group Art Unit:	1632
Filed:	June 21, 2001	Docket No.:	R67/75658.197
Confirmation No.	5854		
Title:	Transgenic Mice Containing Cerberus Gene Disruptions		

DECLARATION OF MICHAEL LEVITEN PURSUANT TO 37 C.F.R. § 1.131

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Michael Leviten, residing at 3166 Bryant Street, Palo Alto, CA 94306, hereby declare:

1. I am a joint inventor of the subject matter claimed in the above-cited patent application, entitled "Transgenic Mice Containing Cerberus Gene Disruptions."

2. I am familiar with the above-cited application. I am also familiar with the Office Action mailed June 22, 2005. I am aware that the Examiner has rejected the claims as anticipated under 35 U.S.C. § 102(a) by Stanley et al., Genesis, 2000, 26:259-264, which according to NCBI records was published in April 2000. The reference discloses a mouse having the first coding exon of the *Cer1* gene replaced with a *lacZ* reporter.

3. The claimed invention, a transgenic mouse having a disruption in the *Cer1* gene, was invented prior to the publication date of April 2000 of the Stanley reference. In support, attached are printout pages from Assignee Deltagen's internal FileMaker animal tracking database. On each page, the box entitled "Target #" shows the number "67" which is Deltagen's internal reference number for the *Cer1* gene (see also the box entitled "Target Info" and the docket

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number of the instant case). On page 1, it can be seen that heterozygous mice were born on November 11, 1999. On page 2, it can be seen that homozygous mice were born on January 25, 2000.

4. Thus, heterozygous and homozygous mice within the scope of the claims were actually reduced to practice prior to the April 2000 effective date of the Peters reference.

5. I further declare that all statements made herein of my own knowledge are true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Michael Leviten

10/12/05
Date

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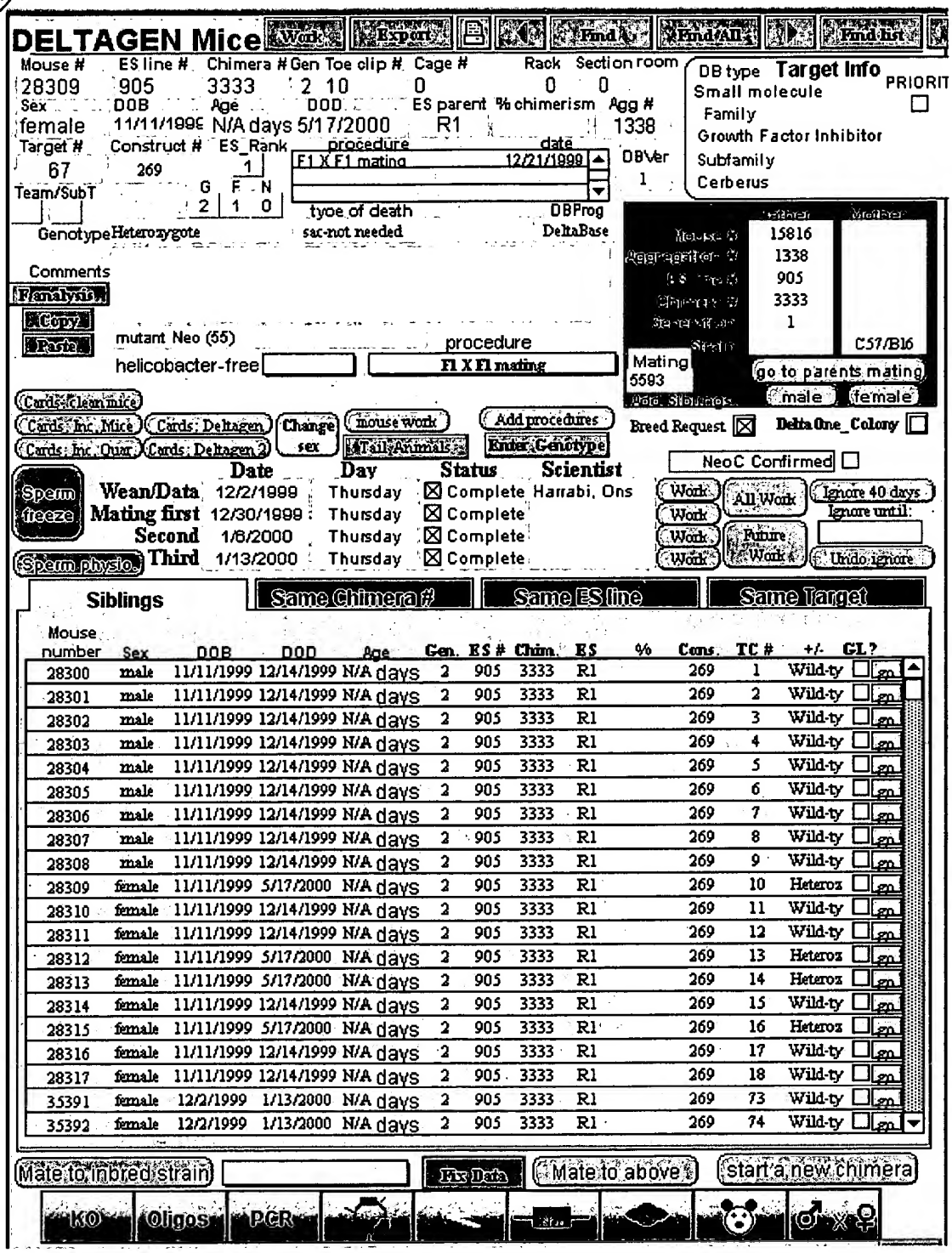

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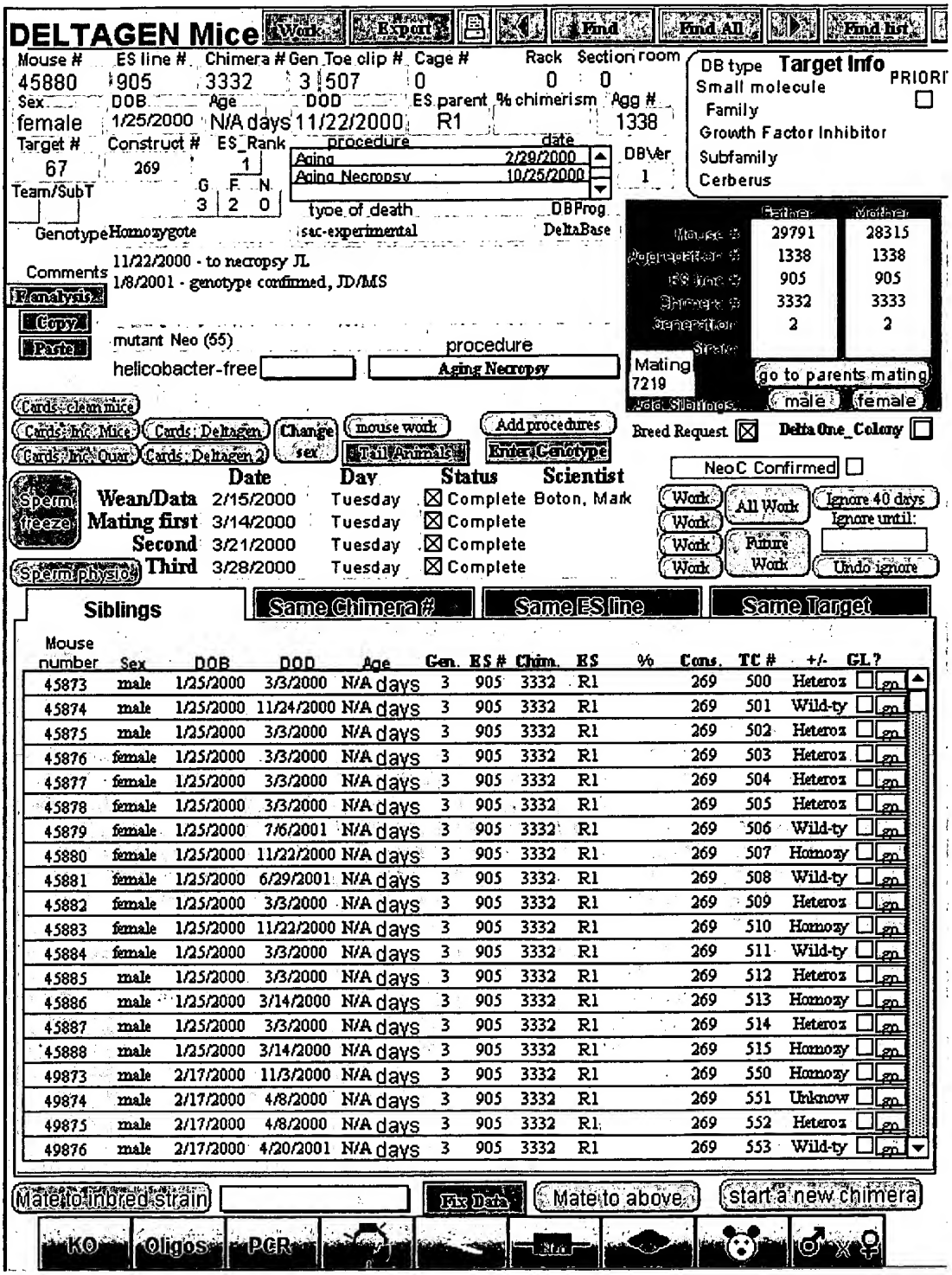

Mouse number	Sex	DOB	DOD	Age	Gen.	ES #	Chim.	ES	%	Cons.	TC #	+/-	GL?
45873	male	1/25/2000	3/3/2000	N/A days	3	905	3332	R1		269	500	Heterozy	
45874	male	1/25/2000	11/24/2000	N/A days	3	905	3332	R1		269	501	Wild-ty	
45875	male	1/25/2000	3/3/2000	N/A days	3	905	3332	R1		269	502	Heterozy	
45876	female	1/25/2000	3/3/2000	N/A days	3	905	3332	R1		269	503	Heterozy	
45877	female	1/25/2000	3/3/2000	N/A days	3	905	3332	R1		269	504	Heterozy	
45878	female	1/25/2000	3/3/2000	N/A days	3	905	3332	R1		269	505	Heterozy	
45879	female	1/25/2000	7/6/2001	N/A days	3	905	3332	R1		269	506	Wild-ty	
45880	female	1/25/2000	11/22/2000	N/A days	3	905	3332	R1		269	507	Homozy	
45881	female	1/25/2000	6/29/2001	N/A days	3	905	3332	R1		269	508	Wild-ty	
45882	female	1/25/2000	3/3/2000	N/A days	3	905	3332	R1		269	509	Heterozy	
45883	female	1/25/2000	11/22/2000	N/A days	3	905	3332	R1		269	510	Homozy	
45884	female	1/25/2000	3/3/2000	N/A days	3	905	3332	R1		269	511	Wild-ty	
45885	male	1/25/2000	3/3/2000	N/A days	3	905	3332	R1		269	512	Heterozy	
45886	male	1/25/2000	3/14/2000	N/A days	3	905	3332	R1		269	513	Homozy	
45887	male	1/25/2000	3/3/2000	N/A days	3	905	3332	R1		269	514	Heterozy	
45888	male	1/25/2000	3/14/2000	N/A days	3	905	3332	R1		269	515	Homozy	
49873	male	2/17/2000	11/3/2000	N/A days	3	905	3332	R1		269	550	Homozy	
49874	male	2/17/2000	4/8/2000	N/A days	3	905	3332	R1		269	551	Unknow	
49875	male	2/17/2000	4/8/2000	N/A days	3	905	3332	R1		269	552	Heterozy	
49876	male	2/17/2000	4/20/2001	N/A days	3	905	3332	R1		269	553	Wild-ty	

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POWER OF ATTORNEY TO PROSECUTE APPLICATIONS BEFORE THE USPTO

I hereby revoke all previous powers of attorney given in the application identified in the attached statement under 37 CFR 3.73(b).

I hereby appoint:

☒ Practitioners associated with the Customer Number: **26619**

OR

☐ Practitioner(s) named below (if more than ten patent practitioners are to be named, then a customer number must be used):

Name	Reg. No.	Name	Reg. No.

As attorney(s) or agent(s) to represent the undersigned before the United States Patent and Trademark Office (USPTO) in connection with any and all patent application assigned only to the undersigned according to the USPTO assignment records or assignment documents attached to this form in accordance with 37 CFR 3.73(b).

Please change the correspondence address for the application identified in the attached statement under 37 CFR 3.73(b) to:

☒ The address associated with Customer Number: **26619**

OR

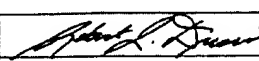
☐ Firm/Individual			
Address			
City		State	Zip
Country			
Telephone		Email	

Assignee Name and Address: Deltagen, Inc.
1031 Bing Street
San Carlos, CA 94070

A copy of this form, together with a statement under 37 CFR 3.73(b) (Form PTO/SB/96 or equivalent) is required to be filed in each application in which this form is used. The statement under 37 CFR 3.73(b) may be completed by one of the practitioners appointed in this form if the appointed practitioner is authorized to act on behalf of the assignee, and must identify the application in which this Power of Attorney is to be filed.

SIGNATURE of Assignee of Record

The individual whose signature and title is supplied below is authorized to act on behalf of the assignee.

Signature		Date: September 13, 2005
Name	Robert J. Driscoll	Telephone: (650) 569-5168
Title	Vice President, Intellectual Property and Legal Affairs	

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STATEMENT UNDER 37 CFR 3.73(b)

Applicant: Leviten, Michael W. Docket No.: R67/75658.197

Application No.: 09/887,552

Entitled: Transgenic Mice Containing Cerberus Gene Disruptions

Deltagen, Inc., a corporation states that it is the assignee of the entire right, title and interest in the patent application identified above by virtue of an assignment of the inventor(s) of the patent application identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 012462, Frame 0575, or for which a copy thereof is attached.

☐ Copies of assignments or other documents in the chain of title are attached.

The undersigned is authorized to act on behalf of the assignee.

Respectfully submitted,

11-22-05
Date

26619
PATENT TRADEMARK OFFICE

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